

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

ROBERT P. GREEN,
Petitioner

No. 2013-MI-42-55

vs.

BONNER MAYO SMITH, III.,
Respondent

APPEARANCES:

MARISA G. BUTTON, Esquire
For the Petitioner

CHRISTIAN R. MILLER, Esquire
For the Respondent

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OPINION DENYING PETITION TO SET ASIDE NOMINATING PETITION

Robert P. Green filed a Petition to Set Aside Nominating Petition of Bonner Smith on March 19, 2013. A hearing on the matter was held on March 26, 2013. Upon consideration of the Petition, the testimony presented, the exhibits admitted and the Memorandums filed by both Parties, the Court has determined that many of the signatures on the Nominating Petition are invalid; however, enough valid signatures remain and the Court will DENY the request that the Nominating Petition be set aside.

Facts and Procedural History

The Petition to Set Aside Nominating Petition of Bonner Smith was filed on March 19, 2013. Mr. Smith is a candidate in the Republican Primary Election for the position of York County Controller and his Nominating Petition contains 390 signatures. He is required to have 250 signatures. Petitioner objects to many of the signatures and requests that the Court find a sufficient number of the signatures invalid to require the setting aside of the Nominating Petition. The objections raised by Petitioner based on invalid address (i.e. the signatory did not include the city, borough or township with the street and number in the address) have been withdrawn.

The hearing was scheduled for March 26, 2013, at which time Petitioner presented testimony from Joel Ryan Ogle, the Executive Director of the York County Republican Committee and the Notary that notarized Respondent's Nominating Petition. Mr. Ogle testified that he noticed several signatures that did not include dates when he notarized the Nominating Petition. The evidence is unclear as to when the dates that now appear on the Petition were written there. Petitioner also presented the testimony of Nikki Suchanic, the Director of the York County Election Bureau. Ms. Suchanic identified multiple invalid signatures on the Nominating Petition. Following the hearing, both Parties submitted legal memorandum to the Court.

Issue Presented

Whether the Nominating Petition of Bonner Mayo Smith, III, contains a sufficient number of valid signatures.

Discussion

The Election Code must be liberally construed so as to protect the right of a candidate to run for office and the rights of the voters. *In re Nomination of Flaherty*, 564 Pa. 671, 679, 770 A.2d 327, 331 (2001). The burden is on the party objecting to the nominating petition to prove defects in the petition. "Where the court is not convinced that challenged signatures are other than genuine, the challenge is to be resolved in favor of the candidate." *Id.*

Before addressing the specific objections lodged by Petitioner, the Court will dispose of the more general objections to Respondent's Nominating Petition. First, Petitioner alleges that Pages 1 and 3 of the Petition are invalid as a whole because the affidavit at the top of those pages does not include the name of the Electoral District in which the nomination or election is to be made. The Court will not invalidate those pages of the Petition because the affidavits clearly state that only qualified electors of York can sign the Petition, that the Petition was directed to the York County Board of Elections, and that the candidate was

running for York County Controller. The electors that signed Pages 1 and 3 of the Petition clearly had notice that York County is the applicable electoral district.

Second, Petitioner argues that Respondent's Statement of Financial Interest filed is inappropriate because the Statement lists Respondent's occupation as "mayor" while the Nominating Petition states his occupation as "Registered Nurse." 65 Pa. CSA §1104 requires all candidates for public office to file a statement of financial interests. Respondent did indeed file such a statement. The form for the Statement of Financial Interests provides only one block wherein a candidate can state their occupation and Respondent listed "mayor" in that block. At the hearing, Petitioner presented no evidence that the Statement was not accurate nor has any evidence been presented that Respondent has an undisclosed source of income totaling in the aggregate \$1300 or more. 65 Pa.CSA § 1105(b)(5). The Court therefore finds that Respondent has substantially complied with the requirement that he file a statement of financial interest and the Court gives Respondent leave to amend his Statement of Financial Interest within seven days of the Order entered in this case to include any other source of income he may have totaling in the aggregate \$1300 or more.

Finally, Respondent has objected to Petitioner's objections based on addresses arguing that those objections are not specifically pled in the Petition to Set Aside Nominating Petition. Petitioner has voluntarily withdrawn all objections based on invalid addresses and the objection is therefore moot. Any objections based on the signatory's failure to include full and complete address information on the Nominating Petition have been withdrawn and will not be considered by the Court.

Petitioner has raised several specific objections to many of the signatures found on Respondent's Nominating Petition. The Court will discuss each in turn.

I. Not Registered with the Republican Party in York County.

In this case, an elector who is qualified to sign a Nominating Petition is a person residing in York County, who is registered to vote, and who is registered with the Republican Party. Ms. Suchanic testified that sixty-six of the signatures on Respondents' Nominating Petition belong to individuals who are unregistered, registered to a different party, or registered with no party affiliation.

Signatures belonging to members of Democratic Party:

- Page 1, Lines 6, 15, 30, 54 & 105.
- Page 2, Lines 3, 14, 27, 32, 40, 48, 58, 62 & 95.
- Page 3, Lines 12, 14, 20, 23, 43, 50, 51 & 58.

- Page 4, Line 40.
- Page 5, Lines 10 & 11.
- Page 6, Lines 2 & 8.

Signatures of members of another party:

- Page 2, Line 38 (registered Independent).
- Page 3, Line 61 (registered with the American Party)
- Page 4, Line 43 (registered Independent).

Signatures of individuals who are not registered:

- Page 1, Lines 24, 27, 60, 65, 85 & 95.
- Page 2, Lines 5, 68, 94 & 97.
- Page 3, Lines 7, 25, 26 & 68.
- Page 4, Lines 11, 12 & 36.
- Page 5, Lines 2 & 9.
- Page 6, Line 5.

Signatures of individuals who have no party affiliation:

- Page 1, Lines 10, 42, 50, 83 & 92.
- Page 2, Lines 12, 77 & 102.
- Page 3, Lines 6, 8 & 44.
- Page 5, Line 4 & 19.
- Page 6, Lines 1, 3, 4 & 11.

Ms. Suchanic also testified that eight of the signatories to the Nominating Petition had cancelled registrations: Page 3, Lines 29, 32, 35, 41 & 49; Page 4, Lines 5 & 59; and Page 6, Line 14. Ms. Suchanic specifically testified that the signatory to Page 1, Line 95 was not registered and cancelled. Since that signature will be stricken because the signor was not registered it need not be included in the signatures stricken because of canceled registrations. In addition, she testified that two of the signatories were registered in Adams County: Page 1, Line 23 & 26.

As the above referenced seventy-six signatures on the Nomination Petition were not signed by qualified electors residing in York County, registered to vote in York County, or registered to the Republic Party, the signatures are hereby stricken from Respondent's Nomination Petition.

II. Address on Petition is Differs from Address on Voter Registration.

Ms. Suchanic testified that she identified a qualified elector registered with the Republican Party that matches the name of the person who signed on Page 2, Line 22; however, the address for the elector is at Third Street in Windsor, and not Second Street as is provided in the Nomination Petition. Ms. Suchanic also identified a qualified elector that matched the name of the signatory on Page 2, Line 72, but the address on the elector's registration was different from the address on the Petition and the address on the Petition did not include a house

number. "Absent extraordinary circumstances, electors who declare a residence at an address different than the address listed on their voter registration card are not qualified electors at the time they sign a nomination petition unless they have completed the removal notice required by the Voter Registration Act." *Flaherty*, 564 Pa. at 682. Ms. Suchanic similarly identified qualified electors whose names match the names on the Petition at Page 2, Line 84, Page 3, Lines 48 & 67, and Page 4, Lines 13 & 49 but whose address as displayed on the Voter Registration Card does not match the address written onto the Petition. Accordingly, the seven signatures discussed above are hereby stricken from Respondent's Nomination Petition.

III. Duplicates.

"Each signer of a nomination petition shall sign but one such petition for each office to be filled." 25 P.S. § 2868. As testified to by Ms. Suchanic, the signatories on Page 3, lines 71-76; 80 & 98 also signed the nominating petition of Robert P. Green, another candidate for the position of York County Controller. Those eight signatures are hereby stricken from Mr. Smith's Nomination Petition.

IV. Date.

"[T]he failure to add a date of signing invalidates the signature...the defect is not immaterial." *Petition to Set Aside Nomination of Fitzpatrick*, 822 A.2d 859,

861 (Pa.CmwltH.2003). Mr. Ogle testified that the signature lines on Page 1, Lines 80-87 did not include a date of signing when he notarized the Nominating Petition. Dates now do appear on the Petition but it is unclear when they were written onto the document. Respondent presented no evidence to contradict the testimony of Mr. Ogle. Line 80 on Page 1 has already been stricken as a duplicate and Lines 83 and 85 on Page 1 have previously been stricken because the elector is not a registered Republican in York County; the remaining five signatures will also been stricken for failure to include a date.

V. Ditto Marks.

The signatures that used "ditto marks" in the place of some portion of the address have been stricken because there has been no show of proof that that the signers used ditto marks because they were physically disabled. *In re Nader*, 865 A.2d 8 (Pa.CmwltH.2004); *Fitzpatrick*, 822 A.2d at 861 (Pa.CmwltH.2003). As testified to by Ms. Suchanic, the signature lines on Page 3, line 58 and Page 4, line 44 have ditto marks only in the "City, Borough or Township" column. No evidence was introduced that those electors were disabled and those two signatures are hereby stricken from the Nomination Petition.

VI. Name of Registered Voter.

Petitioner also argues that the Court should strike any signatures where the signer simply used the first letter of their first name because the signature is an improper deviation from the elector's signature on the voter registration card. The Court declines to exercise its discretion to strike these signatures and will permit Respondent to cure the defect within seven days of the Order entered in this case.

This case has been difficult for the Court considering the strict timelines imposed by the Election Code. The Court would like to note that the exacting review of the signatures required in this case was not aided by Respondent's seemingly haphazard approach to getting signatures. While the Court did not strike a sufficient number of signatures to require setting aside the Nominating Petition, the Court did strike nearly 100 signatures, many of which were obviously inappropriate. The Court would like to admonish any individuals seeking public office to be conscientious in complying with the requirements for a proper Nominating Petition.

Conclusion

The Court has determined that ninety-nine of the signatures on Respondent's Nominating Petition are invalid and those signatures have been

stricken. However, only 250 signatures are needed and 291 signatures still remain on the Nominating Petition. The Court will therefore **DENY** the Petition to Set Aside Nominating Petition of Bonner Smith filed on March 19, 2013. An Order consistent with this Opinion will be entered.

BY THE COURT,

A handwritten signature in black ink, appearing to be 'S. Linebaugh', written over a horizontal line.

Stephen P. Linebaugh, President Judge
19th Judicial District of Pennsylvania

Dated: _____

3/27/13